

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration

Docket #1439001264-09

Between

Re: P/O William Carrion

CITY OF PHILADELPHIA,

“City”

Hearing: August 17, 2011

-and-

F.O.P., LODGE NO. 5,

“Union”

APPEARANCES

For the City:

COLIN S. HAVILAND, ESQ.

For the Union:

JENNINGS SIGMOND, P.C.

Stephen Holyrod, Esq.

BACKGROUND

P/O William Carrion was issued a one-day suspension for two alleged acts of "conduct unbecoming an officer." The Union asserts he is not guilty of either count. It asks that he be made whole and that his record be cleared.

Carrion is a long-service employee. He was appointed to the Police Department on June 4, 1984. He has spent most of his career in the Narcotics Bureau. He is, to say the least, a savvy street cop. He was injured in early 2006 and was placed on long-term disability leave. His first day back on the job was April 27, 2007.

Carrion was assigned to serve as an expert witness ("EW") at the Criminal Justice Center. Two E/Ws are regularly assigned there – one from the Narcotics Field Unit, one from the Strike Force. Their function is to assist the several Assistant District Attorneys trying cases.

K. C. [REDACTED] is an Assistant District Attorney. She has served as such since 2005. She testified as follows:

On April 27, 2007, she was assigned to one of the court rooms at the Criminal Justice Center. She was charged with handling 30-90 cases. Most were drug related. Normally, the drug cases fall into two broad categories: felonies and misdemeanors. The former involve possession with the intent to sell; the latter involve personal use. The task of determining whether a particular case

falls into which category is that of the E/W. For only the E/W can testify – the ADA, whatever their experience, cannot. They must rely upon the experience of the E/W assigned to assist them.

Carrion was sent to Ms. C [REDACTED]'s courtroom to assist her. When he arrived, she recognized him from other cases she had handled. She states she tried to hand him a file, and asked him to look at it. She testified that he refused to accept the file from her. She placed it on the bar of the jury box. She stepped over to the prosecutor's desk, and returned to Carrion. She asked him if the file justified pursuing a felony charge, i.e., did the facts outlined in the file equate to possession with intent to sell. Carrion, she said, told her he'd give her his opinion, but would not testify. He complained to her that he had a "beef" with the Department. He felt he should have been assigned "to the street" given his experience, that his assignment to the Criminal Justice Center was a "waste of time." Ms. C [REDACTED] became frustrated. She told Carrion he wasn't "doing her any good," that she needed someone to take the stand. If he wasn't willing to do so, she said, he should leave. She then gave the file to another narcotics officer who was in the courtroom and asked his opinion. By then, Carrion was gone.

Ms. C [REDACTED], suffice it to say, was upset with Carrion. She had never had an E/W refuse to testify before. She reported the incident.

On May 24, 2007, Carrion was asked by another ADA, M. E. [REDACTED] for his opinion as to whether the evidence (43 packets of a white substance, allegedly crack cocaine, with a net weight of 7.34 grams; and one clear plastic bag containing a green weed substance, allegedly marijuana) in a case rose to possession with intent to sell. He opined it did not. She was shocked. In hundreds of cases she had prosecuted, such evidence was always deemed to be a felony. She reported the incident.

The complaints lodged by ADAs C [REDACTED] and E [REDACTED] came to the Department's attention. That prompted an investigation. It led to a finding that Carrion was guilty of two acts of "conduct unbecoming an officer." He was issued a one-day suspension.

That action prompted the instant grievance. Failure to resolve it led to this dispute.

DISCUSSION & FINDINGS

The Issue

The issue here, as stipulated at the August 17, 2011 hearing, is whether the City had just cause to suspend P/O Carrion.

Positions of the Parties

The City's position may be simply stated. It regards Carrions conduct as simply unacceptable. He had no right at all to refuse to testify for ADA C [REDACTED]

And his failure to recognize the evidence in ADA E [REDACTED]'s case amounted to possession with intent to sell is remarkable. Taken together, they surely justified the one-day suspension. The City asks, accordingly, that its action be sustained.

The Union, for its part, suggests the City failed to meet its burden of proof. It relies heavily upon Carrion's testimony.

Carrion recalls showing up in the courtroom assigned to ADA C [REDACTED]. He states she extended a file to him. She wanted his opinion as to whether the case warranted a felony charge or a misdemeanor charge. The judge was not in court. So, he asked what the case status was. She insisted that he read the file. He said he told her he'd give her his opinion, but if she wasn't ready he would not look at the file. He offered to return later, when he'd look at the file and render an opinion. She became annoyed. He told her he won't testify until he sees the file. He then left.

Carrion explains this by asserting he was trying to "prioritize" his work load.

As to the May 24, 2007 incident, Carrion freely admits he told ADA E [REDACTED] that in his opinion, the file did not warrant a felony charge. He based his opinion, he said, upon his experience.

The Union asks me to accept Carrion's testimony. The charges should be dismissed.

Opinion:

This case involves two separate incidents. They must be dealt with in sequence.

As to the April 27, 2007 incident, it is clear to me no officer assigned to serve as a E/W at the Criminal Justice Center has a right to refuse to testify when asked to do so by an ADA. Such conduct clearly falls into the "conduct unbecoming" category.

This is a classic she said/he said case. It necessarily rises and falls upon a determination of relative credibility.

I have no trouble finding that Ms. C [REDACTED]'s testimony was the more credible. Her testimony was clear. It was consistent. It was convincing. It withstood vigorous cross-examination. In a word, I believed her version of the events.

Carrion, in my view, was far less credible. It is apparent that he had a chip on his shoulder that day. He admits he was upset at being assigned to serve as an E/W. He "belonged on the street." It was a waste of his experience to assign him to the Criminal Justice Center. That may be. But it is not his call. He was assigned a task. He was obliged to perform it to the best of his ability.

It is clear to me that Carrion did not understand his function was to assist ADA C [REDACTED]. She wanted his opinion before the judge arrived so she could

determine how to proceed. It was not Carrion's place to decide when he would venture an opinion. And, once rendered, to back it up by taking the stand. The ADA is in charge; not the E/W.

In brief, I am persuaded that Carrion's action was improper. Standing along, it justified a one-day suspension.

As to the second charge, I believe it should be dismissed.

At root, the City seeks to discipline Carrion for doing what he was supposed to do: render an opinion as to whether certain evidence warranted a felony charge. He concluded it did not.

Carrion, very likely was wrong. There is good reason to conclude that. But the proper thing to do is not to discipline him for being wrong. It is to train him better. Or, to reassign him.

In sum, I sustain the first count, but not the second. The discipline imposed was, all things considered, mild.

* * *

AWARD


The City had just cause to issue P.O. W. Carrion a one-day suspension for his conduct on April 27, 2007.

DATED: September 7, 2011


STANLEY L. AIGES

AFFIRMATION

I, STANLEY L. AIGES, do hereby affirm upon my oath as Arbitrator that I am the individual who executed this instrument, which is my Award.


STANLEY L. AIGES